

Attorney's Docket No.: 12587-007001

**OFFICIAL COMMUNICATION****FACSIMILE****FAX RECEIVED**  
**MAY 27 2003****PETITIONS OFFICE****GROUP 3625 FAX NO: (703) 308-6916**

Number of pages including this page 6

Applicant : Marc F. Hayes, Jr. et al.

Serial No. : 09/876,563

Filed : June 7, 2001

Art Unit : 3625

Examiner : Robert E. Rhode

**FACSIMILE COMMUNICATION**

Title : CUSTOMER MESSAGING SERVICE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Attached to this facsimile communication cover sheet is a Petition under 37 CFR §1.182,  
faxed this 27<sup>th</sup> day of May, 2003, to Group 3625, the United States Patent and Trademark Office.

Respectfully submitted,



Frank R. Occhiuti

Reg. No. 35,306

Date: May 27, 2003

Fish &amp; Richardson P.C.

225 Franklin Street

Boston, MA 02110-2804

Telephone: (617) 542-5070

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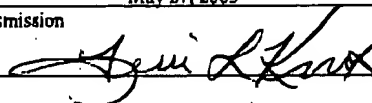
**CERTIFICATE OF TRANSMISSION BY FACSIMILE**

I hereby certify that this correspondence is being transmitted by  
facsimile to the Patent and Trademark Office on the date indicated  
below.

May 27, 2003

Date of Transmission

Signature



Terri L. Knox

Typed or Printed Name of Person Signing Certificate

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application. See 37 C.F.R. 1.137(f) if a notice of subsequent foreign or International filing required by 35 U.S.C. 12(b)(2)(B)(iii) and 37 C.F.R. 1.213(c) is not filed within forty-five (45) days after the date of filing of the foreign or international application.

The only difference between the original Request Form and the updated Request Form is that the updated Request Form describes the consequence of its filing in the Note reproduced above. With this being the only difference between the two Forms, each should be afforded similar treatment for purposes of notice under the Statute, particularly given the absence of Statutory requirements on the form of notice. Whether or not the Request Form is supplemented by an explanation of the consequence of its filing, the act of filing remains unchanged - and so to should its consequence.

Applicant points out that the goal served by their filing of the original Request Form was the same as the goal that would have been served by filing an updated Request Form -- publication of the underlying application and harmonization of procedures for international applications, whether initially filed in the United States or abroad. To treat the act of filing of these two Request Forms differently serves no purpose.

Moreover, three points inform our Petition for recognition of Statutory notice based on the filing of the Office's original Request Form: (1) the Statute has no requirements for the form of notice, (2) the Office recognizes that the act of filing a Request Form serves as a form of notice under the Statute, and (3) Applicant's filing of the original Request Form effected the same effects of publication and harmonization that were effected by the updated Request Form. It is for these reasons that Applicant requests recognition of Statutory notice based on their filing of the original Request Form.

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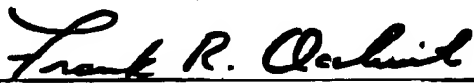
Attorney's Docket No.: 12587-007001

The Request was filed with the intention of satisfying the Statute. As such, Applicants contend that, to the extent that the Request did not give notice of foreign filing as required by the statute, any delay in giving such notice was unintentional. Moreover, Applicants also hereby explicitly give the required notice.

Please charge \$130.00 to our Deposit Account No. 06-1050 for the required fee.

Respectfully submitted,

Date: MAY 23, 2003

  
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## APPENDIX A

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PETITIONS OFFICE

PTO/SB/28 (11-00)

Approved for use through 10/31/2002. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**REQUEST TO RESCIND PREVIOUS  
NONPUBLICATION REQUEST  
35 U.S.C. 122(b)(2)(B)(II)**

Application Number 09/876,563

Filing Date June 7, 2001

First Named Inventor Hayes et al.

Title CUSTOMER MESSAGING SERVICE

Atty Docket Number 12587-007001

Group Art Unit 2881

Examiner

I hereby rescind the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

May 30, 2002

Date

  
Signature

Stephan J. Filipek

Attorney of Record  
Reg. No. 33,384

Signature Stephan J. Filipek  
Name Stephan J. Filipek  
Date May 30, 2002

This request must be signed in compliance with 37 CFR 1.33(b).

**Burden Hour Statement** This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

## APPENDIX B

PTO/SB/36 (10-01)

Approved for use through 10/31/2002. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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<b>REQUEST TO RESCIND PREVIOUS NONPUBLICATION REQUEST 35 U.S.C. 122(b)(2)(B)(ii)</b>	Application Number		
	Filing Date		
	First Named Inventor		
	Title		
	Atty Docket Number		
	Group Art Unit		
	Examiner		

I hereby **rescind** the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature\_\_\_\_\_  
Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b).

**Note:** Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days (45) days after the date of filing of such foreign or international application. See 37 CFR 1.137(f) if a notice of subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is not filed within forty-five days (45) days after the date of filing of the foreign or international application.

**CERTIFICATE OF MAILING OR TRANSMISSION**

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Name (Print/Type)\_\_\_\_\_  
Signature\_\_\_\_\_  
Date

**Burden Hour Statement:** This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 8 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.